

ARKANSAS SUPREME COURT

No. CR 08-704

DANIEL SANDERS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered October 9, 2008

PRO SE MOTION FOR BELATED
APPEAL, TO PROCEED *IN FORMA*
PAUPERIS AND FOR APPOINTMENT
OF COUNSEL [CIRCUIT COURT OF
PULASKI COUNTY, CR 2006-2975,
HON. JOHN LANGSTON, JUDGE]

MOTION GRANTED.

PER CURIAM

In 2007, petitioner Daniel Sanders was convicted by a jury of multiple criminal offenses and sentenced as a habitual criminal to an aggregate term of 540 months' incarceration. Petitioner was represented at trial by his retained attorney, John Marshall May.¹ The judgment and commitment order was entered on March 19, 2007, and no notice of appeal was filed. Now before us is petitioner's pro se motion for belated appeal pursuant to Arkansas Rule of Appellate Procedure—Criminal 2(e) seeking to proceed with the direct appeal of the criminal convictions.

In considering whether to grant a motion for belated appeal, we determine whether the party or attorney is at fault or there is good reason for the failure to perfect the appeal. *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). In this matter, on March 21, 2008, Mr. May was cautioned by the Arkansas Supreme Court Committee on Professional Conduct for his failure to properly represent petitioner in the criminal matter. The Committee concluded that Mr. May knew that

¹The judgment incorrectly reflected that appellant was represented by attorney John W. May, II.

petitioner wished to appeal his convictions and that he was obligated to perfect the appeal but failed to do so. As it is clear that Mr. May was at fault, we grant petitioner's motion for belated appeal. We direct our clerk to lodge the record so that the appeal from the judgment and commitment order may proceed.

In the instant motion, petitioner further contends that he is indigent and an affidavit in support of his request to proceed *in forma pauperis* is attached to the motion. As the State has not contested that assertion, we grant the motion to proceed *in forma pauperis*.

Finally, we consider appellant's request for appointment of counsel. Under no circumstances may counsel simply abandon an appeal. Arkansas Appellate Procedure Rule—Criminal 16(a) provides that trial counsel, whether retained or court appointed, *shall* continue to represent a convicted defendant throughout any appeal, unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause. *Evans v. State*, 370 Ark. 427, ___ S.W.3d ___ (2007) (per curiam).

As Mr. May has not been relieved of representing petitioner by the court below, and he is an attorney in good standing, Mr. May is hereby appointed to continue as attorney-of-record in this appeal. He is directed to file a petition for writ of certiorari within fifteen days to call up any additional portion of the record that may be necessary for an appeal to this court. A briefing schedule will be set when the complete record is lodged.

Motion granted.